

Consultant Policy  
(Occurrence)

**SAMPLE**

## Consultant Policy

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**SAMPLE**

**1. Insuring Clause** In consideration of the payment of the premium due and in reliance upon the statements made by the **Insured** in the **Proposal** and subject to the terms of this **Policy**, the Insurer agrees to indemnify the **Insured** in respect of the **Insured's** legal liability to pay **Damages** resulting from a covered **Claim** brought within the Republic of Ireland.

### **1.1 Coverage**

Subject to any **Excess** specified in the Schedule, the **Policy** covers **Claims** arising from:

#### **1.1.1 Medical Malpractice:**

1.1.1.1 Death, bodily injury, mental injury, illness or disease of or to any patient of the **Insured** caused by any act, neglect, error or omission of the **Insured** during the **Policy Period** which is, or is alleged to be, negligent and which arises from the provision of **Professional Services** within the **Territorial Limits**; and

1.1.1.2 Medico-Legal expert work conducted by the **Named Insured** during the **Policy Period**, including written or oral advice in connection with a legal or administrative action concerning clinical or medical issues involving patients or patient care;

1.1.2 Liability for **Good Samaritan Acts** - Death, bodily injury, mental injury, illness or disease of or to any patient of the **Insured** caused by any act, neglect, error or omission of the **Insured** during the **Policy Period** which is, or is alleged to be, negligent and which arises from the performance of **Good Samaritan Acts** during the **Policy Period** by the **Insured** anywhere in the world;

1.1.3 Liability for Sports Clubs or Sports Associations - Death, bodily injury, mental injury, illness or disease of or to any patient of the **Insured** caused by any act, neglect, error or omission of the **Insured** during the **Policy Period** which is, or is alleged to be, negligent and which arises from the provision of **Professional Services** to any Republic of Ireland-based sports club or sports association including travelling to a sports event anywhere in the world, subject to the prior consent of the Insurer;

1.1.4 Liability for **Locum Tenens**—Death, bodily injury, mental injury, illness or disease of or to any patient which arises solely from any act, error or omission of a **Locum Tenens** for which the **Insured** is, or is alleged to be, vicariously liable and which would be covered by Section 1.1.1 of this **Policy** if the **Professional Services** were provided by the **Insured**.

Section 1.1.4 only applies to **Claims** where the **Locum Tenens** has indemnity or assistance provided by a Medical Defence Organisation or insurer for any such act, error or omission with a Limit of Indemnity as required by the Medical Council.

No indemnity or **Defense Costs** are provided under Section 1.1.4 to the **Locum Tenens**.

## 1.2 Additional Coverages

Subject to any **Excess** and Additional Coverages Sub-Limits specified in the Schedule, the **Policy** covers **Claims** arising from:

- 1.2.1 A prosecution brought against the **Insured** in a court of criminal jurisdiction arising out of the **Insured's Professional Services** performed within the **Territorial Limits** during the **Policy Period**, such coverage continuing until such time the **Insured** admits to or is judicially determined to have committed a criminal act;
- 1.2.2 A **Claim** alleging defamation arising from an act committed in good faith in the course and scope of the **Insured's Professional Services** within the **Territorial Limits** during the **Policy Period**;
- 1.2.3 Breach of professional confidentiality as a result of the **Insured's** unauthorized use of confidential information of a patient arising out of the **Insured's Professional Services** performed within the **Territorial Limits** during the **Policy Period**;
- 1.2.4 Civil proceedings brought against the **Insured** under the Equal Status Acts 2000 - 2015 for unlawful discrimination committed in the course and scope of the **Insured's Professional Services** within the **Territorial Limits** during the **Policy Period**;
- 1.2.5 An investigation or disciplinary hearing brought against the **Insured** by the **Insured's** professional body, regulatory body, employer, or locum service arising out of the **Insured's Professional Services** performed within the **Territorial Limits** during the **Policy Period**;
- 1.2.6 A Coroner's Inquest resulting from the **Insured's Professional Services** performed within the **Territorial Limits** during the **Policy Period** and where the **Insured's** attendance as an "interested party" or witness has been advised or required.

## 1.3 Defence Costs

The **Policy** will also indemnify the **Insured** for **Defence Costs** incurred in connection with a covered **Claim** where such **Defence**

**Costs** are reasonably incurred with the Insurer's prior consent. **Defence Costs** are included in and shall erode the aggregate Limit of Liability and any applicable Additional Coverages Sub-Limit specified in the Schedule.

## 2. Definitions

Certain words or phrases in the **Policy** have been specially defined, as set out below, or qualified. These words have that same meaning or qualification wherever used.

### 2.1 Allied Healthcare Professional

A person who has received formal training or education in a health-related field and if required, holds a valid licence to practice or practicing certificate, such licence or practicing certificate having been issued by the relevant lawfully established and recognised licensing authority within the Republic of Ireland.

However, an **Allied Healthcare Professional** does not include any doctor, physician, surgeon, dental surgeon or dentist, resident, nurse anaesthetist, midwife, physician's associate, podiatrist, chiropractor, perfusionist or psychologist.

### 2.2 Claim

Any suit, action or proceedings served upon or issued against the **Insured** or any express written demand for **Damages** or services communicated to the **Insured**.

All suits, actions or proceedings or demands arising from or connected to the same or related acts, errors or omissions, or the continuous or repeated exposure to substantially the same harmful condition or the same or similar originating cause or source, shall be deemed to be one **Claim** under the **Policy**.

### 2.3 Damages

Sums which the **Insured** is legally liable to pay under the laws of the country/ies specified in the Schedule pursuant to any judgment, award or settlement, including (where the **Insured** is legally liable to pay them) third party claimants' fees, costs and expenses for which the **Insured** is liable.

**Damages** does not include any fines, penalties or amounts awarded as punitive, aggravated, exemplary, or multiple damages.

### 2.4 Defence Costs

Reasonable and necessary fees and expenses incurred by or on behalf of the **Insured** with the prior consent of the Insurer and resulting from:

2.4.1 an investigation, defence or settlement of any **Claim**;

- 2.4.2 attendance or representation at or in connection with any examination, enquiry or proceedings commissioned by any official, administrative or regulatory body exercising due authority over the **Insured** in relation to any circumstance which has a direct relevance to a **Claim**;
- 2.4.3 any appeal from any of the proceedings mentioned in 2.4.1 and 2.4.2 above. Any such appeal may only be pursued at the sole discretion of the Insurer; and
- 2.4.4 loss of earnings in accordance with the allowance at a rate shown in the Schedule for each day the Insured attends a trial and/or pre-trial consultation at the Insurer's direction.

## 2.5 Excess

The amount of **Damages** and/or **Defence Costs** specified as such in the Schedule, which the **Insured** must incur and for which the Insurer is not liable and in excess of which the Insurer's obligation to indemnify under this **Policy** applies.

## 2.6 Good Samaritan Acts

Medical treatment and/or advice administered by the **Insured** at the scene of a bona fide medical emergency, accident or disaster.

## 2.7 Insured

2.7.1 The **Named Insured**.

2.7.2 The personal representatives of the estate of the **Named Insured** acting solely in their capacity as personal representatives of the **Named Insured** in connection with any **Claim**.

2.7.3 An **Allied Healthcare Professional** or any administrative or clerical staff while directly employed by and acting within the direct control or supervision of the **Named Insured** for services performed in connection with and incidental to the **Named Insured's** rendering of **Professional Services**. For the avoidance of doubt, the direct employment, control and supervision requirements are not met if the **Allied Healthcare Professional** is employed by a partnership or other legal entity.

## 2.8 Locum Tenens

A **Registered Medical Practitioner** performing the duties of the **Named Insured** during his/her temporary absence.

## 2.9 Named Insured

The person named in the Schedule.

## 2.10 Partner

An individual in a legal relationship with one or more medical practitioners under a written agreement which forms a partnership under the laws of the Republic of Ireland for the purpose of providing **Professional Services**.

### **2.11 Policy**

This document, the Schedule and any attached appendices and any conditions or Endorsements.

### **2.12 Policy Period**

The period set out in the Schedule.

### **2.13 Potential Claim**

Any event or circumstance which (i) might reasonably be expected to give rise to a **Claim** being made against the **Insured** and (ii) which the **Insured** knew about or reasonably could have foreseen or discovered prior to the **Policy Period**.

Where the **Insured**:

- (1) has received either an oral or written complaint from or on behalf of a patient regarding the **Insured's Professional Services**; or
  - (2) was aware of any complication, incident or adverse outcome to the **Insured's** patient involving death, amputation, loss of organ function, loss of vision, or permanent neurological injury;
- the **Insured** will be deemed to have been aware of an event or circumstance which might reasonably be expected to give rise to a **Claim**.

### **2.14 Product**

Any solid, liquid, or gaseous substance, material, item or component or part thereof.

### **2.15 Professional Services**

In a professional bona fide clinical, medical or surgical capacity:

- 2.15.1 The examination, diagnosis, treatment (including prescribing of drugs and therapy) or care of an individual patient; and/or
- 2.15.2 Written or oral advice on or concerning the examination, condition, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient.

### **2.16 Proposal**

The written proposal or declaration and/or any application, presentation, statements, declarations or information upon which the Insurer has relied, including renewal documentation and material facts



declarations, made by or on behalf of the **Insured** to the Insurer for the insurance evidenced by this **Policy**.

### **2.17 Public Liability**

Liability for death, bodily injury, mental injury, illness or disease of any person, or loss of or damage to tangible property of any person caused by an act, error or omission of the **Insured**, other than in the course and scope of providing **Professional Services**.

### **2.18 Registered Medical Practitioner**

A doctor who is licenced to practice by and maintains registration with, the Medical Council.

### **2.19 Territorial Limits**

The Territorial Limits as stated in the Schedule.

### **2.20 Terrorism**

An act including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes, including the intention to influence any government and/or to put the public, or any section of the public in fear.

## **3. Limits of Liability:**

The Insurer's total liability for each **Claim** under the **Policy** in respect of **Damages** and **Defence Costs** combined shall not exceed the Per **Claim** Limit of Liability specified in the Schedule and the Insurer shall not be liable to pay any sums after the Per **Claim** Limit of Liability has been exhausted by payment of or agreement to pay **Damages** and/or **Defence Costs**.

The Insurer's total liability under the **Policy** in respect of all **Damages** and **Defence Costs** combined shall not exceed the aggregate Limit of Liability specified in the Schedule and the Insurer shall not be liable to pay any sums after the aggregate Limit of Liability has been exhausted by payment of or agreement to pay **Damages** and/or **Defence Costs**.

If more than one policy issued by the Insurer covers the **Insured's Damages** and/or **Defence Costs** (as defined herein), the maximum limit of liability under all such insurance policies (including this **Policy**) shall not in the aggregate exceed the highest applicable limit of liability available under any one such insurance policy (including this **Policy**). This condition does not apply to any other insurance policy issued by the Insurer specifically to apply as excess insurance over this **Policy**.

## **4. Exclusions 4.1 Activities outside Training or Accreditation**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of **Professional Services** in respect of which the **Insured** does not have the requisite training or accreditation.

#### **4.2 Administration/Prescription of Certain Drugs, Medicine or Pharmaceuticals**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of the administering or prescribing of:

- 4.2.1 amphetamines in connection with weight control. This exclusion shall not apply in respect of preparations containing anorexic agents licensed under the Medical Preparations (Licensing Advertisement and Sale) regulations of 1984 (S.I. No. 210 of 1984) or any amendment thereto and prescribed for the short term use in accordance with the manufacturer's instructions for the treatment of obesity; or
- 4.2.2 any drug, medicine or pharmaceutical that the **Insured** knows or should have known has not been licensed or approved, or approval has been withdrawn, by the Irish Board under the Medical Preparations (Licensing, Advertisement and sale) Regulations 1984 (S.I. No 210 of 1984) or any amendment thereto, unless such drug medicine or pharmaceutical has been approved in writing by the Insurer.

This exclusion shall not apply to drugs administered in connection with the **Insured's** involvement (other than as the applicant to whom the approval for the trial is granted) in the "conduct of a clinical trial" within the meaning of the Control of Clinical Trials Acts of 1987 or any amendment thereto and where such clinical trial is conducted in accordance with the requirements of the same Acts.

#### **4.3 Clinical Trials Liability**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of any clinical trials. This exclusion shall only apply where the **Insured** is the sponsor of, or is otherwise legally responsible for, such clinical trial or where the clinical trial does not have the appropriate ethics committee approval.

#### **4.4 Contract or Agreement**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of the acts of a third party assumed by the **Insured** under any contract or agreement, whether written, oral, or implied, entered into by the **Insured**. This exclusion does not apply to coverage provided under Section 1.1.4.

#### **4.5 Cross Liabilities**

The **Policy** does not cover any **Claim** or **Defence Costs** made by one **Insured** against any other **Insured**. However, this exclusion does not apply if the **Claim** arises from the provision of **Professional Services** by an **Insured** to another **Insured**.

#### 4.6 Cyber Liability

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of:

- 4.6.1 the unauthorized access or use of an **Insured's** computer system; or
- 4.6.2 the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. As used in this exclusion, electronic data means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment or by means of the internet.

#### 4.7 Directors and Officers Liability

The **Policy** does not cover any **Claim** or **Defence Costs** brought against any **Insured**, in connection with their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

#### 4.8 Employers' Liability

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of death, bodily injury, mental injury, illness or disease of or to any person under a contract of service or apprenticeship with the **Insured** or under the **Insured's** supervision as an employee or for any breach of any obligation owed by the **Insured** as an employer to any such person, including any **Claim** or any event or circumstances in respect of which compensation is available or required under the Republic of Ireland Safety, Health and Welfare at Work Act 2005 (as amended).

However, this exclusion shall not apply to any **Claim** brought by any such person who is or becomes a patient of the **Insured** entirely independently of their employment.

#### 4.9 Failure to Maintain Licence

The **Policy** does not cover any **Claim** or **Defence Costs** arising from the **Insured's** performance of, or failure to perform, **Professional Services** during the **Policy Period** while the **Insured** was not authorized to provide such **Professional Services** due to the suspension, revocation, voluntary surrender, restriction of or failure to

secure and maintain any licence that is required by any government, regulatory or supervisory body.

However, this exclusion shall not apply to any **Claim** arising from **Good Samaritan Acts** rendered while the **Insured** is on a Maternity Leave and meets the conditions under 5.11.

#### **4.10 Guarantee of Results**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of the **Insured's** guarantee of the result of **Professional Services**.

#### **4.11 Health Service Executive Activities**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of any activity or service undertaken by the **Insured**:

- 4.11.1 whilst employed or contracted to provide services for the Health Service Executive (HSE) or any other equivalent body; or,
- 4.11.2 that would ordinarily have the benefit of coverage through the Clinical Indemnity Scheme of the State Claims Agency or its equivalent or any other indemnification agreement for the **Insured**.

Section 4.11.1 does not apply to Section 1.2.

#### **4.12 Motor, Aviation, Property and Marine Liability**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of the ownership, possession or use by or on behalf of the **Insured** of any motor vehicle or trailer or any aircraft, watercraft or hovercraft, mobile or immobile buildings, structures, premises, land or property.

#### **4.13 Nuclear Risk**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or contributed to or arising from:

- 4.13.1 Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel; or
- 4.13.2 the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **4.14 Obstetrics**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of Obstetric medicine or Obstetric surgery.

This exclusion does not apply to Sections 1.1.2 or 1.2.

#### **4.15 Other Indemnity**

The **Policy** does not cover any **Claim** or **Defence Costs** which is the subject of indemnity or assistance provided by any Medical Defence Organisation or insurer (other than the Insurer).

#### **4.16 Pollution**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of:

4.16.1 seepage, pollution or contamination; or

4.16.2 the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances.

#### **4.17 Products Liability**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of the manufacture of any **Products**, or the construction, alteration, repackaging, repair, servicing or treating of any **Products** sold, supplied or distributed by the **Insured** and any **Claim** arising out of the failure of any **Product** to fulfill the purpose for which it was designed, or to perform as specified, warranted or guaranteed.

#### **4.18 Professional/Business Enterprise Activities**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by, arising out of or in any way connected with an **Insured's** activity as an officer, director, medical director or department head of any hospital, clinic, nursing home, commercial laboratory, or other professional or business enterprise.

This exclusion does not apply to Section 1.2.

#### **4.19 Public Liability**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of **Public Liability**.

#### **4.20 Sexual Misconduct**

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of:

4.20.1 Sexual relations;

- 4.20.2 Sexual contact or intimacy;
- 4.20.3 Sexual harassment; or
- 4.20.4 Sexual exploitation;

where such acts have been determined by way of adjudication by a court or other state body with competent authority, or where the **Insured** has admitted to such acts.

#### 4.21 Terrorism

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of **Terrorism**.

It is understood and agreed by the **Insured** and the **Insurer** that the burden of proof that such **Claim** does not fall within this exclusion shall be upon the **Insured**.

#### 4.22 Toxic Mould

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by, arising out of or in any way connected with:

- 4.22.1 the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of any fungi or bacteria on or within a building or structure, including its contents;
- 4.22.2 the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposing of, or in any way responding to or assessing the effects of fungi or bacteria by any **Insured** or by any other person or entity.

Fungi means any type or form of fungus, including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

However, this exclusion shall not apply to any **Claim** or **Defence Costs** arising out of the diagnosis and/or treatment of patients of the **Insured** who are suffering from infection by such fungi or bacteria.

#### 4.23 Trade or Economic Sanctions

The Insurer shall not provide cover and shall not be liable to pay any **Claim** or **Defence Costs**, or provide any benefit hereunder, to the extent that the provision of such cover, payment of such **Claim** or **Defence Costs** or provision of such benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### 4.24 War

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority.

It is understood and agreed by the **Insured** and the **Insurer** that the burden of proof that such **Claim** does not fall within this exclusion shall be upon the **Insured**.

#### 4.25 Wrongful Acts

The **Policy** does not cover any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of:

- 4.25.1 any deliberate or wilful misconduct of the **Insured**;
- 4.25.2 any dishonest, fraudulent or criminal act of the **Insured**;
- 4.25.3 the performance of any activities of the **Insured**, or any person for whom the **Insured** is legally responsible, whilst under the influence of intoxicants or narcotics;

and where such acts have been determined by way of adjudication by a court or other state body with competent authority or where the **Insured** has admitted to such acts.

### 5. Conditions 5.1 Cancellation

The Insurer may cancel the **Policy** or any part of it at any time by giving seven (7) calendar days' written notice to the **Named Insured** at the address stated in the Schedule. The Insurer will provide the **Named Insured** with its reason(s) for the cancellation of the **Policy**. Except in the case of 5.8 below, premium will be refunded to the **Named Insured** on a proportionate basis corresponding to the unexpired **Policy Period**.

The **Named Insured** may cancel the **Policy** at any time by giving written notice to the Intermediary listed in the Schedule. Such cancellation shall be effective on the date requested by the **Insured** or the date the notice is received by the Insurer, whichever is later. If the **Named Insured** cancels the **Policy** within the first fourteen (14) business days of the **Policy Period**, then Premium will be refunded to the **Named Insured** on a proportionate basis corresponding to the unexpired **Policy Period**. Premium will be refunded to the **Named Insured** according to the short rate cancellation table in Appendix 1 of the **Policy** if the **Named Insured** cancels the **Policy** at any time after the first fourteen (14) business days of the **Policy Period**. Notice under this paragraph shall be given to the Intermediary as follows:

By Phone: +353 (0)1 661 0504

By Letter: Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2

By E-mail: info@medisec.ie

## 5.2 Complaints

5.2.1 If the **Insured** has an inquiry or wishes to make a complaint, please contact the Insurer, using the contact details below, providing the policy/claim number and the name of the **Insured** to help the Insurer to address your comments quickly.

By Letter: Head of Compliance  
Berkshire Hathaway European Insurance DAC  
7 Grand Canal Street Lower, Dublin D02 KW81.  
By Phone: +353 (0)1 246 7246  
By E-mail: customercontact@bhei.eu

5.2.2 The Insurer will acknowledge the complaint within five (5) business days of receiving it, keep the **Insured** informed of progress, and do its best to resolve matters to the **Insured's** satisfaction within forty (40) business days. If the Insurer is unable to do this, the **Insured** may be entitled to refer the complaint to the Financial Services and Pensions Ombudsman who will review the **Insured's** case. The Insurer will provide full details of how to do this when the Insurer provides its final response letter addressing the issues raised.

5.2.3 **Please note:** The Financial Services and Pensions Ombudsman may not be able to consider a complaint if the **Insured** has not provided the Insurer with the opportunity to resolve it. The Financial Services and Pensions Ombudsman's address is:

The Financial Service and Pensions Ombudsman,  
Lincoln House, Lincoln Place, Dublin 2, D02 VH20  
Website: [www.fspo.ie](http://www.fspo.ie)  
E-mail: [info@fspo.ie](mailto:info@fspo.ie)  
Phone: +353 1 567 7000

## 5.3 Consent of Insurer

The Insurer recognizes and supports the Insured's ethical duty of open disclosure and the duty of candour determined by either the Medical Council's *Guide to Professional Conduct and Ethics for Registered Medical Practitioners*, including any amendment or replacement thereof.

Without prejudice to the foregoing, the **Insured** shall not admit liability, or use any form of wording which is tantamount to an admission of liability or enter any arrangement or make any offer, payment or promise or incur any **Defence Costs** without the prior written consent of the Insurer. Where the **Insured's** breach of this paragraph has prejudiced the Insurer, the Insurer may decline all indemnity to the **Insured** in respect of any **Claim**.



## 5.4 Contract Integrity

The **Policy** shall be read as one document and the information, including the **Proposal**, given to the Insurer when the **Policy** was concluded has been relied upon by the Insurer when issuing this **Policy**. No alteration to the **Policy** shall be binding unless it is evidenced by endorsement issued by or on behalf of the Insurer.

## 5.5 Control and Settlement of Claim

5.5.1 The Insurer shall be entitled but not obligated to take full control of the defence of any **Claim** in the **Insured's** name and shall have full control of the conduct of any negotiations or proceedings in the settlement of any **Claim**.

5.5.2 The Insurer will not settle any **Claim** without the written consent of the **Insured**, which shall not be unreasonably withheld. In the event of any dispute arising in respect of the withholding of such consent by the **Insured**, the provisions of Section 5.10.3 shall apply.

5.5.3 The **Insured** shall assist the Insurer and co-operate fully with them in the investigation and/or defence of any **Claim** (including by responding to reasonable requests for information in an honest and reasonably careful manner). Where the **Insured's** breach of this paragraph has prejudiced the Insurer, the Insurer may decline all indemnity to the **Insured** in respect of any **Claim**. Such assistance and cooperation shall include but is not limited to keeping the Insurer informed of the **Insured's** up to date contact details at all times, attendance at any pre-trial hearings, or trial, as requested by the Insurer; assistance in securing and giving evidence; obtaining the attendance of witnesses; doing nothing to prejudice the Insurer's ability to investigate, defend, and/or settle any matter to which this cover applies; and the prosecution of any subrogation or recovery action without charge to the Insurer.

## 5.6 Data Protection

5.6.1 This section describes how the Insurer processes the personal data of the **Insured**. The Insurer processes the personal data provided by the **Insured** including name, date of birth, contact details, date of qualification, training records.

5.6.2 The Insurer stores this personal data to communicate with the **Insured**, to set up and administer the **Policy** including handling claims, to meet any legal or regulatory needs and to fulfil the legitimate interests of the Insurer, such as to improve products and services. Calls may be monitored and recorded in order that the service may be improved and to help prevent and detect fraud.

5.6.3 For the above purposes personal data may be shared with other Insurer group companies, brokers, other distribution parties, insurers and reinsurers and other service providers.

5.6.4 The Insurer retains the personal data for the period necessary to fulfil the purposes set out in this **Policy**, unless a longer retention period is required by any regulation or permitted by law.

5.6.5 If the **Insured** would like to access, correct, or delete their personal data, restrict or object to processing of their personal data, or if the **Insured** would like to request an electronic copy of their personal data is sent to another company, or to ask any questions related to the Insurer's use of personal data, please contact the Insurer using the details below:

By Letter: Data Protection Officer  
Berkshire Hathaway European Insurance DAC  
7 Grand Canal Street Lower, Dublin D02 KW81.  
By Email: data.privacy@bhei.eu

5.6.6 Please note the rights in relation to personal data may be restricted under applicable law. If the **Insured** objects to the processing of certain personal data by the Insurer, please be aware, it may not be possible to perform the Insurer's obligations pursuant to the **Policy**.

## **5.7 Disclosure and Material Change in the Risk Insured**

5.7.1 The **Insured** must disclose (honestly and with reasonable care) and not misrepresent to the Insurer, before this **Policy** is entered into, every matter which is the subject of any question in the **Proposal**. This duty of disclosure also applies to any renewal, extension, variation or reinstatement of the **Policy**.

5.7.2 The Insurer has relied upon each of the **Insured's** disclosures in the **Proposal** in determining whether to underwrite this **Policy** and in determining the **Policy's** terms, conditions and exclusions, and the premium payable. The **Insured** shall promptly inform the Insurer of any material changes in their practice that occur after the Insurer agrees to underwrite the risk but before the Policy incept. Where there have been such material changes, the Insurer shall be entitled to amend the terms of the Policy as appropriate or cancel the Policy in accordance with Section 5.1.

5.7.3 In the event of a negligent failure by the **Insured** to comply with the duty of disclosure with respect to any question in the **Proposal**, the Insurer shall apply a compensatory and proportionate test. This includes (but is not limited to) the Insurer taking the following steps at the Insurers' absolute discretion:

- 5.7.3.1 if the Insurer would not have underwritten the **Policy** on any terms, the Insurer may avoid the **Policy** and refuse all **Claims** (but the Insurer shall return all Premium);
- 5.7.3.2 if the Insurer would have underwritten the **Policy**, but on different terms (excluding terms relating to the Premium), the **Policy** can be treated as if it had been entered into on those different terms; or
- 5.7.3.3 if the Insurer would have underwritten the **Policy** (whether the terms relating to matters other than the Premium would have been the same or different), but would have charged a higher premium, the Insurer may reduce proportionately the amount to be paid on a **Claim** or charge additional premium.
- 5.7.4 The Insurer may also terminate the **Policy** by giving the **Named Insured** reasonable notice, where there are no outstanding **Claims**. The Insurer can also elect to reduce its liability under the **Policy** for **Damages** or **Defence Costs** in direct proportion to the additional premium it would have charged had the material facts or matters been disclosed.
- 5.7.5 In the event of an intentional or fraudulent failure by the **Insured** to comply with the duty of disclosure, or the **Insured's** intentional or fraudulent misrepresentation to the Insurer, the Insurer shall be entitled to avoid the **Policy**.
- 5.7.6 During the **Policy Period**, the **Insured** shall give notice in writing as soon as practicable to the Intermediary named in the Schedule of any alteration which materially affects the risk or the subject matter covered by the **Policy**. Where the **Insured's** breach of this paragraph has prejudiced the Insurer, the Insurer may decline all indemnity to the **Insured** in respect of any **Claim**. The Insurer is entitled to refuse to cover the additional exposure or cancel the **Policy** in accordance with the cancellation provisions of this **Policy**. Notice under this paragraph shall be given to the Intermediary as follows:

By Phone: +353 (0)1 661 0504

By Letter: Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2

By E-mail: info@medisec.ie

## **5.8 Fraudulent Claims**

- 5.8.1 If the **Insured** shall make any request for payment from the Insurer knowing, or having ought to have known, the same to be fraudulent (which includes being false or misleading), or seeks to obtain any benefit or advantage under this **Policy** by use of any fraudulent device, the Insurer shall be entitled to

refuse to pay the **Claim** and shall be entitled to terminate the **Policy**. All Premium paid shall be forfeited and all payments to the **Insured** under the **Policy** shall be returned.

5.8.2 Where an Insurer becomes aware that the **Insured** has made a fraudulent **Claim**, the Insurer may, as soon as is practicable after becoming aware of that fact, notify the **Insured** on paper or on another durable medium that it is avoiding the **Policy**, and if the Insurer so notifies the **Insured**, the **Policy** shall be treated as having been terminated with effect on or after the date of the submission of the fraudulent **Claim**, and:

5.8.2.1 the Insurer may refuse all liability to the **Insured** under the **Policy** in respect of any **Claim** made on or after the date of the fraudulent act, and

5.8.2.2 the Insurer need not return any of the Premium paid under the **Policy**.

## 5.9 Insurance Act 1936

All monies that become or may become due and payable by the Insurer under the **Policy** shall, in accordance with Section 93 of the Insurance Act 1936, be payable and paid in the Republic of Ireland.

## 5.10 Jurisdiction, Applicable Law, and Dispute Resolution

5.10.1 This **Policy** is governed by and shall be construed in accordance with the laws of the Republic of Ireland.

5.10.2 In the event of any dispute between the Insurer and the **Insured** concerning this **Policy**, its validity, existence or termination or relating to the interpretation of the terms, definitions, conditions, limitations, appendices and/or exclusions contained herein, the parties agree to submit to the exclusive jurisdiction of the Irish courts and shall comply with all requirements necessary to give such court jurisdiction.

5.10.3 In the event of any dispute arising between the Insurer and the **Insured** concerning the withholding of consent under Section 5.5.2 then the Insurer may refer the matter for determination on a privileged basis to an independent Senior Counsel (SC) whose determination shall be binding upon both the Insurer and the **Insured**. The SC shall be a specialist in clinical negligence with at least 10 years' practice as a SC in this field. In the event that the parties cannot agree upon the identity of such SC within seven (7) days then such appointment will be made by the Chairman of the Bar Council at the time. If a dispute is referred to the SC under this section, each party shall submit to the SC within fourteen (14) days of the SC being appointed its own position in respect of the potential settlement under consideration in order for the SC to verify the reasonableness of

the withholding of consent by the **Insured** and the dispute shall be resolved by the SC determining whether such withholding of consent by the **Insured** is reasonable. Each party shall be entitled (and if requested by the SC obliged) to make written submissions (together with any supporting documentary evidence) to the SC in respect of its position, which the SC shall consider in good faith, and the SC shall be entitled to request such additional information as he or she may reasonably require to make his or her decision. Each party shall provide such information so requested as is within its possession or control except to the extent that to do so would breach any law, regulation or contractual obligation to which that party is subject. The Insurer and the **Insured** shall use their respective reasonable endeavours to procure that the SC shall deliver a copy of his or her decision to each of them as soon as reasonably practicable following the date of appointment and in any event, unless unavoidable, not longer than thirty (30) days after the date of appointment. The costs of the SC shall under this Section 5.10.3 be borne by the Insurer save where the SC determines that the **Insured's** withholding of consent was manifestly unreasonable, in which case such costs shall be borne by the **Insured**. All matters arising under or in connection with this Section 5.10.3 shall remain strictly private and confidential and privileged as between the Insurer and **Insured** and, save as may be required by applicable law and regulation, shall not be disclosed to any other person or entity.

### 5.11 Maternity Leave

During the **Insured's** maternity leave, the Insurer agrees to limit the coverage under the **Policy** to **Good Samaritan Acts** provided that:

- 5.11.1 the period of maternity leave does not last for more than 52 weeks;
- 5.11.2 the **Insured** requests the maternity leave in writing prior to the maternity leave commencing;
- 5.11.3 the **Insured** notifies the Insurer in writing prior to returning to practice;
- 5.11.4 the **Insured** shall render no **Professional Services** during the period of maternity leave;

Premium will be refunded to the **Insured** on a proportionate basis corresponding to the period of maternity leave.

### 5.12 Notice of Claims

Notice of any **Claim** or **Potential Claim** shall be given to the Intermediary listed in the Schedule *immediately* upon the **Insured** becoming aware of the **Claim** or **Potential Claim**. Where the **Insured's** breach of this paragraph has prejudiced the Insurer, the Insurer may decline all indemnity to the **Insured** in respect of any **Claim**. Notice under this paragraph shall be given to the Intermediary

listed in the Schedule first by a telephone call to the Medisec Medico Legal Helpline listed below and then in writing to either the mailing address or e-mail address listed below:

By Phone: +353 (0)1 661 0504

By Letter: Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2

By E-mail: info@medisec.ie

### **5.13 Premium Payment Terms**

All premiums due to the Insurer must be paid within thirty (30) days from this **Policy's** inception date. Non-receipt by the Insurer of such premium within thirty (30) days shall render this **Policy** void with effect from its inception date.

### **5.14 Qualifications of Other Healthcare Professionals**

The **Insured** shall at all times obtain satisfactory evidence that all healthcare professionals, including any of the **Insured's Partners** and **Locum Tenens**, practicing at the **Insured's** premises have received formal training or education in a health-related field and if required, hold valid licences to practice, are members of their appropriate professional body and have indemnity or assistance provided by any Medical Defence Organisation or insurer for any act, error or omission during the **Policy Period** which is, or is alleged to be, negligent and which arises from the provision of **Professional Services**.

### **5.15 Records**

The **Insured** shall at all times:

5.15.1 Maintain accurate descriptive records of all **Professional Services** and products and equipment used in procedures. Such records shall be made available for inspection and use by the Insurer or its appointed representatives in the investigation or defence of any **Claim** hereunder;

5.15.2 Retain the records referred to in 5.15.1 above for any applicable periods as established by law;

5.15.3 Provide the Insurer or its appointed representatives with such oral or written information, assistance, signed statements, or evidence as the Insurer may require.

### **5.16 Subrogation**

The Insurer shall be entitled at any stage to bring an action for their own benefit seeking indemnity, **Damages** or otherwise against any third party in the name of the **Insured** to the extent of any sums paid or payable by them or in pursuance of their interests in any **Claim**. The Insurer's expenses in the recovery shall be applied prior to the

application of the recovery to the **Claim**. The **Insured** shall provide all reasonable assistance to the Insurer in respect of such actions.

SAMPLE

## Appendix 1 - Short Rate Cancellation Table

### Short Rate Cancellation Table

A. For policy periods of one year:

Days Insurance in Force	Percent of One Year Premium
1 - 73 .....	30
74 - 91 (3 months) .....	35
92 - 109 .....	40
110 - 127 .....	44
128 - 146 .....	50
147 - 164 .....	55
165 - 182 (6 months) .....	60
183 - 205 .....	65
206 - 228 .....	70
229 - 250 .....	75
251 - 273 (9 months) .....	80
274 - 296 .....	85
297 - 319 .....	90
320 - 342 .....	95
343 - 365 (12 months) .....	100

B. For policy periods more or less than one year:

1. If the **Policy Period** is less than one year, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If the **Policy Period** is more than one year, Earned Premium will be calculated on a proportionate basis.